

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

Quiana Lei Porter,

Plaintiff,

v.

Yuba City Police Officers Escherman, Hansen,  
Jensen, Jurado, et al.

Defendants.

No. 2:20-cv-01554-KJM-DB

ORDER

Plaintiff Quiana Porter brings this action under 42 U.S.C. § 1983 against several Yuba City Police Officers. Named defendants Officers Escherman, Hansen, Jensen and Jurado move for summary judgment on statute of limitations grounds, or in the alternative, summary adjudication on plaintiff's claims. Porter moves to strike the motion for summary judgment for not seeking leave of court to file a successive motion for summary judgment. For the reasons below, the court **grants defendants' motion** and **denies plaintiff's motion**.

**I. BACKGROUND**

On July 31, 2018, Yuba City police officers arrested Porter. Defs.' Resp. to Pl.'s Statement of Disputed Facts (SDF) ¶¶ 1, 10, ECF No. 74-1; Pl.'s Resp. to Defs.' Statement of Undisputed Fact (SUF) ¶¶ 1, 6, ECF No. 63. Porter started recording the officers with her phone before being arrested. SUF ¶ 4; SDF ¶ 7. The video shows six officers. Defs.' Video, ECF No.

1 57-4; Pl.'s Video, ECF No. 72 (collectively, Video).<sup>1</sup> Throughout the video, Porter asks the  
2 officers for their names and badge numbers. *See generally* Video; SDF ¶ 8. The named  
3 defendants— Escheman, Hansen, Jensen and Jurado—gave their names in response. Video at  
4 00:02–01:06. The video footage ends moments after an officer tells Porter she is under arrest, but  
5 records about twenty more seconds of audio. *Id.* at 01:22–1:45.

6 On August 3, 2020, a little more than two years after her arrest, Porter filed a pro se  
7 complaint against Yuba City Police Department and fifty Doe defendants. Compl., ECF No. 1.  
8 The complaint did not identify any officers by name. *Id.* Porter then retained counsel and filed  
9 an amended complaint, but again, did not name any individual officers. First Am. Compl. (FAC),  
10 ECF No. 7. After the case had been pending for almost a year, Porter moved to amend the  
11 complaint to correct “certain facts” and to name defendant officers whose names Porter obtained  
12 after retaining counsel. Mot. Amend at 2, ECF No. 15.<sup>2</sup>

13 The court granted the motion, Prior Order (July 20, 2021), ECF No. 18, and Porter filed a  
14 second amended complaint naming defendants Escheman, Hansen, Jensen and Jurado for the first  
15 time. Second Am. Compl. (SAC), ECF No. 19. Defendants moved to dismiss the complaint, and  
16 argued, among other things, that Porter’s claims are barred by the statute of limitations. Mot.  
17 Dismiss at 4–5, ECF No. 20-1. The court denied the motion because the record at the time  
18 suggested Porter was “ignorant of the officers’ names and sought leave to amend after retaining  
19 counsel who was able to obtain some of the officers’ names.” Prior Order (Nov. 4, 2021) at 4,  
20 ECF No. 28. Given Porter’s alleged ignorance, the court found the operative complaint related  
21 back to Porter’s original filing and her claims were timely. *Id.* The parties then completed initial  
22 discovery disclosures and Porter deposed Escheman, Hansen, Jensen and Jurado. SUF ¶ 15.

23 In January 2022, Porter moved to amend her second amended complaint, Second Mot.  
24 Amend, ECF No. 33, and defendants moved for summary judgment on statute of limitation  
25 grounds, Mot. Summ. J., ECF No. 35. The court granted Porter’s motion to amend and denied

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<sup>1</sup> Defendants and plaintiff lodged the video footage with the court in disc and USB format.

<sup>2</sup> When citing page numbers on filings, the court uses the pagination automatically generated by the CM/ECF system.

1 defendants' motion for summary judgment. Prior Order (May 6, 2022), ECF No. 44. Although  
2 the court found Porter knew the names of the defendants when she filed the initial complaint, the  
3 court concluded the statute of limitations did not bar her claims because "she did not know each  
4 officer's role in her injuries." *Id.* at 7. The court was persuaded by a sister district court's  
5 analysis in *Kestler v. City of Santa Rosa*, No. 15-01361, 2016 WL 3091674 (N.D. Cal. June 2,  
6 2016), and after construing the record in Porter's favor as required, the court found she added the  
7 officers' names in her second amended complaint "after she and her counsel 'reviewed the  
8 relevant evidence.'" *Id.* at 9 (citing Prior Order (July 20, 2021) at 1).

9 Porter then filed a third amended complaint, which remains the operative complaint.  
10 Third Am. Compl. (TAC), ECF No. 46. In early August 2022, almost two years after filing the  
11 initial complaint, Porter then moved to amend the complaint yet again to substitute two named  
12 officers for two Doe defendants. Third Mot. Amend, ECF No. 49. Porter alleged she could not  
13 have sought leave to amend before deposing the named defendants because she could not  
14 determine exactly how or whether the two officers violated her rights. *Id.* at 5. The court held an  
15 in-person hearing on the motion and planned to ask Porter's counsel to explain what information  
16 he had obtained in the deposition that he could not have obtained through the police reports  
17 provided during initial discovery. Prior Order (Sept. 14, 2022) at 2, ECF No. 54. Counsel did not  
18 appear. Mins. Mot. Hr'g, ECF No. 52. The court denied the motion after finding Porter had "not  
19 shown that she diligently sought leave to amend her complaint." Prior Order (Sept. 14, 2022) at  
20 4.

21 Before the court denied plaintiff's motion to file a fourth amended complaint, defendants  
22 had filed a first motion for summary judgment. Mot. Summ. J. After the court denied the  
23 motion, defendants deposed Porter. Deposition of Quiana Porter (Porter Dep.), Bittner Decl. Ex.  
24 A, ECF No. 57-3. The following is an excerpt from Porter's deposition transcript:

25 Q: In your declaration, you stated that when you filed your original  
26 complaint, you were not aware of what role each of the defendant  
27 officers played in your injuries. You said you have become aware,  
28 since then, of the role that they played. How did you become aware?

1 A: [I] talked with my counsel. . . . I didn't review the video for a very,  
2 very long time, because of the trauma that had ensued to me. So as  
3 time had passed, I became aware, because I started watching the  
4 video, I started having conversations and talking about it again and –  
5 and recollecting.

6 Q: So you watched the video?

7 A. Uh-huh.

8 Q. And you also had new memories?

9 A. Not new memories. Just recalling.

10 *Id.* 99:15–100:6. Following the deposition, the defendants again move for summary judgment on  
11 statute of limitations grounds, or in the alternative, summary adjudication on Porter's claims.  
12 Second Mot. Summ. J. (Mot.), ECF No. 57-1. Porter opposes. Opp'n, ECF No. 60.<sup>3</sup> Defendants  
13 replied. Reply, ECF No. 74.

14 The parties agree Porter "clarified she became aware of the role that each of the defendant  
15 officers played in her injuries by watching her cell phone video." *SUF* ¶ 16. However, in support  
16 of her opposition to the motion for summary judgment, Porter declares:

17 [D]uring my deposition . . . , the "old memory" that I testified that I  
18 recalled, referred solely to the events leading up to the incident of  
19 police misconduct, but not the facts of the misconduct itself or what  
20 role that any of the officers played in the police misconduct.

21 Declaration of Quiana Porter (Porter Decl.) ¶ 19, ECF No. 61. Porter further declares she had "no  
22 idea" what role each defendant played until she discussed the event with her counsel and son,  
23 who witnessed the incident. Porter Decl. ¶ 20.

24 Porter moves to strike defendants' motion for summary judgment for not obtaining leave  
25 of court prior to filing their motion. Mot. Strike, ECF No. 58. Defendants oppose. Opp'n Mot.  
26 Strike, ECF No. 59. Porter replied. Reply Mot. Strike, ECF No. 73. The court addresses the  
27 motion to strike first.

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<sup>3</sup> The court accepts the plaintiff's late filing, resolving ECF No. 71. *See* Fed. R. Civ. P. 6(b); Local Rule 144(c).

## II. MOTION TO STRIKE

Porter moves to strike defendants’ motion for summary judgment and argues defendants violated Federal Rule of Civil Procedure 56 by filing a successive motion for summary judgment without leave of court. Mot. Strike at 3. In support, Porter cites an Initial Standing Order of a Judge in the Central District of California. *Id.* (citing *Bouyer v. 501-541 Glenoaks LLC*, No. 21-02731, 2021 U.S. Dist. LEXIS 145392 (C.D. Cal. Apr. 8, 2021)). Nothing in Rule 56, Fed. R. Civ. P., this District’s local rules, *see generally* E.D. Cal. L.R., or this court’s standing order, *see generally* Standing Order, ECF No. 11-1, prohibits successive motions for summary judgment without leave of court.

“Federal Rule of Civil Procedure 56 does not limit the number of motions that may be filed.” *Hoffman v. Tonnemacher*, 593 F.3d 908, 911 (9th Cir. 2010). The Ninth Circuit has explicitly held “district courts have discretion to entertain successive motions for summary judgment.” *Id.* “[A] successive motion for summary judgment is particularly appropriate on an expanded factual record.” *Id.*; *see also Powers v. Devereaux*, 20 F. App’x 708, 709 (9th Cir. 2001) (unpublished) (“A court may consider successive summary judgment motions on the same issue.”).

Here, defendants have new deposition testimony—i.e., new evidence—to support their successive motion for summary judgment. They did not need leave of court to file the motion. Further, defendants set the motion before the expiration of the deadline to hear all dispositive motions. *See* Prior Order (Oct. 3, 2022), ECF No. 56 (continuing dispositive motions hearing deadline to December 9, 2022); *cf. Allianz Sigorta, S.A. v. Ameritech Indus.*, 2017 U.S. Dist. LEXIS 117271, \*14 (striking a party’ motion for summary judgment for not abiding by the court’s pretrial scheduling order).

Accordingly, the court **denies** Porter’s motion to strike.

## III. MOTION FOR SUMMARY JUDGMENT

### A. Legal Standard

A court may grant summary judgment if there is “no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The

1 moving party bears the initial burden of showing the district court “there is an absence of  
 2 evidence to support the nonmoving party’s case.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 325  
 3 (1986). The burden then shifts to the nonmoving party, which “must establish that there is a  
 4 genuine issue of material fact . . . .” *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S.  
 5 574, 585 (1986). In deciding a motion for summary judgment, the court draws all inferences and  
 6 views all evidence in the light most favorable to the nonmoving party. *Id.* at 587–88.

7 To prevail based on an affirmative defense—i.e., statute of limitations—at summary  
 8 judgment, defendants must prove the defense in question is “beyond controversy.” *S. Cal. Gas*  
 9 *Co. v. City of Santa Ana*, 336 F.3d 885, 888 (9th Cir. 2003) (citation omitted). Specifically, they  
 10 must prove “no reasonable jury could fail to find that the defense had been established.” *Snell v.*  
 11 *Bell Helicopter Textron, Inc.*, 107 F.3d 744, 746 (9th Cir. 1997). Conversely, a plaintiff “can  
 12 defeat summary judgment by demonstrating the evidence, taken as a whole, could lead a rational  
 13 trier of fact to find in its favor.” *S. Cal. Gas*, 336 F.3d at 888.

## 14 **B. Analysis**

15 Defendants again argue Porter’s claims against the individual officers are untimely and  
 16 are barred by the statute of limitations. Mot. at 10. Porter was injured on July 31, 2018. SUF  
 17 ¶ 1. Porter filed her initial complaint on August 3, 2020. Compl. For § 1983 claims, federal  
 18 courts “apply the forum state’s statute of limitations for personal injury actions, along with the  
 19 forum state’s law regarding tolling,” so long as the law is not “inconsistent with federal law.”  
 20 *Butler v. Nat’l Cmty. Renaissance of Cal.*, 766 F.3d 1191, 1198 (9th Cir. 2014) (internal citations  
 21 and marks omitted).

### 22 **1. The Original Complaint Was Timeley**

23 The relevant statute of limitations for Porter’s claims in California is two years. *See* Cal.  
 24 Civ. Proc. Code § 335.1. Porter was arrested on July 31, 2018. SUF ¶ 1. She filed her original  
 25 complaint on August 3, 2020 three days after the expiration of the two-year statutory period,  
 26 which would have been July 31, 2020. *See* Prior Order (May 6, 2022) at 4. However, the statute  
 27 of limitations for Porter’s 1983 claims period was tolled by the emergency rules promulgated by  
 28 the Judicial Council of California in response to the COVID-19 pandemic. *Id.* at 4–5 (finding the

1 statute of limitations for Porter's claims was tolled from April 6, 2020 to October 1, 2020).

2 Because the three days are covered by the emergency tolling of the limitation period, Porter's  
3 original complaint was timely.

## 4 **2. Claims Against Defendants Do Not Relate Back**

5 Although the original complaint was timely, Porter did not name any of the individual  
6 defendants in her original or first amended complaint. *See* Compl.; FAC. Porter did not name the  
7 defendants until she filed her second amended complaint in mid-2021, long after the extended  
8 emergency statute of limitation period expired. *See* SAC.

9 Federal Rule of Civil Procedure 15 governs the resolution of whether Porter's amended  
10 complaint relates back to her original complaint. *See* Fed. R. Civ. P. 15; Prior Order (May 6,  
11 2022) at 5. Under Rule 15, an amendment relates back to a previous pleading if it would do so  
12 "under the state law that provides the applicable statute of limitations, . . . even if the amendment  
13 would not otherwise relate back under the federal rules." *Butler*, 766 F.3d at 1200 (citation  
14 omitted).

15 The general rule under California law "is that an amended complaint that adds a new  
16 defendant does not relate back to the date of filing the original complaint." *Woo v. Super. Ct.*,  
17 75 Cal. App. 4th 169, 176 (1999). However, an exception exists under California's Code of Civil  
18 Procedure section 474 for the substitution of "a new defendant for a fictitious Doe defendant."  
19 *Id.* at 176. For the exception to apply, a plaintiff must "actually be ignorant of the name or  
20 identity of the fictitiously named defendant at the time the complaint is filed." *Optical Surplus,*  
21 *Inc. v. Super. Ct.*, 228 Cal. App. 3d 776, 783 (Ct. App. 1991). A plaintiff's ignorance "should be  
22 real and not feigned," *Scherer v. Mark*, 64 Cal. App. 3d 834, 841 (Ct. App. 1976), and extends to  
23 situations where a plaintiff "knew the identity of the person but was ignorant of the facts  
24 [supporting] a cause of action against the person," *Optical Surplus, Inc.*, 228 Cal. App. 3d at 783  
25 (internal citation and marks omitted).

### 26 **a) Plaintiff Knew the Names of the Defendants**

27 In its prior order denying the defendants' motion for summary judgment, this court found  
28 plaintiff knew the names of the defendants prior to filing her original complaint. Prior Order

(May 6, 2022) at 6. It is undisputed Porter recorded the officers with her cellphone when they provided her with their names. *SUF* ¶ 17. No evidence suggests Porter lacked access to the cellphone video when she filed her original complaint. *Id.* ¶ 18. Under the California Court of Appeal’s opinion in *Woo*, which the Ninth Circuit followed in *Butler*, 766 F.3d at 1202, “if the plaintiff knows the defendant’s identity and then forgets it at the time the complaint is filed, to use the section 474 relation-back doctrine . . . plaintiff must have at least reviewed readily available information likely to refresh his or her memory.” *Woo*, 75 Cal. App. 4th at 180. “[I]f the defendant can be identified from the readily available information, then section 474 is unavailable.” *Id.* Here, reviewing the video before filing her original complaint would have refreshed Porter’s recollection of the officer’s names.

**b) Plaintiff Knew the Role Each Defendant Played in Her Injuries**

Previously, the court found that even if Porter knew the defendants’ names, her claims could still relate back if she did not know the role each defendant played in her injuries at the time she filed her initial complaint. Prior Order (May 6, 2022) at 8–9. The court was ultimately persuaded by a sister district court’s analysis in *Kestler*, 2016 WL 3091674. In *Kestler*, the plaintiff alleged he was “unaware of the roles each of the individual officers played” when he filed his original complaint and stated the “nature of [defendant officer’s] use of force was uncertain” prior to an officer’s deposition. *Id.* at \*2. The court there found “listing the officers whose names appeared in the incident report as having attacked [plaintiff] – does not establish that Plaintiff knew the specific facts as to [the officer’s] involvement at the time of filing” the initial motion. *Id.* Similarly, this court concluded Porter “knew only that a group of officers was involved when she filed her original complaint” and added the individual defendants’ names “after she and her counsel ‘reviewed the relevant evidence.’” Prior Order (May 6, 2022) at 8–9 (quoting Prior Order (July 20, 2021)).

Defendants now argue Porter’s recent deposition testimony makes this case “starkly distinct from *Kestler*.” Mot. at 12. Defendants contend Porter was not “genuinely ignorant” of the defendants’ role in her injuries at the time she filed her original complaint, “because she had all the information she needed in her memory and simply needed to recall it.” *Id.* The court



1 agrees. During Porter's deposition, defendants asked Porter how she became aware of the role  
 2 each defendant played in her injuries. Porter Dep. 99:15–20. Porter responds she did not review  
 3 the video footage for a long time because of her trauma, but "became aware" as time passed and  
 4 she spoke with her counsel, watched the video and had conversations about the incident.  
 5 *Id.* 99:21–100:2. She states she then recalled her memories. *Id.* 100:6.

6 Unlike in *Kestler*, Porter did not learn entirely new facts that alerted her to the role each  
 7 defendant played in her injuries. *Cf. Scherer v. Mark*, 64 Cal. App. 3d 834, 841 (Ct. App. 1976)  
 8 (finding section 474 was unavailable to a plaintiff in part because "[n]owhere in any pleadings or  
 9 declarations did plaintiff ever say what *new facts* she discovered" (emphasis in original)). As the  
 10 defendants point out, Porter named the individual officers prior to receiving defendants' initial  
 11 disclosures and before deposing the defendants. Mot. at 13; *see* SAC. She does not allege her  
 12 counsel obtained police reports or other evidence pertaining to the officers' relationships to her  
 13 injuries after filing her complaint. Unlike the roles of the other two officers she allegedly  
 14 discovered through the named officers' depositions, *see* Third Mot. Amend, Porter did not obtain  
 15 new information about the named officers outside of information already existing in her  
 16 memories, which were then refreshed by reviewing the cellphone video.<sup>4</sup>

17 At hearing, Porter argued the new information she received was from her son, who was an  
 18 eyewitness to the event. *See* Porter Decl. ¶ 20. Porter argues she did not fully know the roles  
 19 each officer played until she talked to her son several months after filing the initial complaint.  
 20 *See id.* However, Porter does not claim her son is the one who informed her of the roles each  
 21 officer played. Rather, she testified under oath that she recalled the events from her arrest and  
 22 became aware of the officers' roles by watching the video and remembering the incident. *See*  
 23 Porter Dep. 99:21–100:6. Both parties agree Porter "clarified she became aware of the role that  
 24 each of the defendant officers played in her injuries by watching her cell phone video." SUF

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<sup>4</sup> Had Porter diligently sought leave to amend her complaint to add the two officers, she may have been able to show her claims as to those officers related back to the original complaint. *See* Prior Order (Sept. 14, 2022). However, Porter did not seek to add the two officers until two years after filing her original complaint and well after initial disclosures. Further, Porter's counsel did not appear before the court to explain what information Porter obtained that she could not have gleaned during initial discovery.

¶ 16. Nothing in the record indicates the video was not readily available to her at all times. Thus, reviewing the video before filing her original complaint would have refreshed her recollection of the roles each officer played in her injuries. Under California law, because Porter “did not avail herself of readily available information that would have refreshed her recollection of” each defendant’s identity and role, “she is not entitled to use section 474 to amend her complaint after the statute of limitations has run.” *Woo*, 75 Cal. App. 4th at 180.

**c) Plaintiff’s Declaration Does Not Create an Issue of Material Fact**

Porter opposes and cites to her declaration, in which she avers the “old memory” she referenced at the deposition “referred solely to the events leading up to the incident of police misconduct, but not . . . what role that any of the officers played in the police misconduct.” Porter Decl. ¶ 19; *see* Opp’n at 3. She further states she had “no idea” what role each defendant played until she discussed the event with her counsel and son. Porter Decl. ¶ 20.

Defendants argue Porter’s declaration “statements are immaterial” because the material fact is she became aware of defendants’ role in her injuries “by accessing her video and recalling her memory.” Reply at 3. Defendants also argue her declaration statements should be disregarded to the extent they “contradict her clear testimony.” *Id.* (citing *Block v. City of Los Angeles*, 253 F.3d 410, 419, n.2 (9th Cir. 2001)).

The court agrees. Under *Woo*, the relevant inquiry is whether Porter could have refreshed her recollection of defendants’ identity by viewing readily available information. *See Woo*, 75 Cal. App. 4th at 180. As explained above, the deposition transcript and Porter’s agreement to defendants’ statements of undisputed fact establish for the purpose of summary judgment she became aware of the defendants’ roles by watching the video. Porter Dep. 99:24–100:6; SUF ¶ 16.

Additionally, the court strikes Porter’s declaration to the extent her statements directly contradict her deposition testimony. “[A] party cannot create an issue of fact by an affidavit contradicting his prior deposition testimony.” *Kennedy v. Allied Mut. Ins. Co.*, 952 F.2d 262, 266 (9th Cir. 1991). This rule, however, “does not automatically dispose of every case in which a contradictory affidavit is introduced to explain portions of earlier deposition testimony.”

1 *Id.* at 266–67. To apply the rule, a district court must first determine that the contradiction is a  
 2 “sham” used to “‘create’ an issue of fact and avoid summary judgment.” *Id.* at 267. Then, the  
 3 court must determine the inconsistency is “clear and unambiguous” to justify striking an affidavit.  
 4 *Van Asdale v. Int’l Game Tech.*, 577 F.3d 989, 998–99 (9th Cir. 2009). An affidavit that  
 5 elaborates on, explains or clarifies deposition testimony is not a sham. *Id.* at 999.

6 Porter’s recent declaration contradicts her deposition testimony. During her deposition,  
 7 defendants reminded Porter, “you stated that when you filed your original complaint, you were  
 8 not aware of what role each of the defendant officers played in your injuries. You said you have  
 9 become aware, since then, of the role that they played.” Porter Dep. 99:15–19. Defendants  
 10 proceed to ask, “How did you become aware?” *Id.* 99:20. Porter answers, “I became aware,  
 11 because I started watching the video, I started having conversations and talking about it again and  
 12 . . . recollecting.” *Id.* at 99:21–100:2. Porter now declares this answer did not refer to what roles  
 13 the defendants played. *See* Porter Decl. ¶ 19. On its face, the declaration cannot be squared with  
 14 her deposition testimony. The court also notes the timing of Porter’s declaration, which was  
 15 signed on the day Porter filed her opposition to defendants’ summary judgment motion, suggests  
 16 Porter authored the declaration for the purpose of creating a dispute of material fact. For these  
 17 reasons, the court strikes Porter’s declaration.

#### 18 **d) The Timing of When Plaintiff Observed the Video is Immaterial**

19 Porter states she “mentally could not muster the courage to observe the video footage in  
 20 the cell phone” until after filing the original complaint. Porter Decl. ¶ 18; *see* Opp’n at 3. While  
 21 the court is sympathetic for any trauma she experienced, this fact is not material to the question of  
 22 whether she had readily available information that could have refreshed her memory. *See Woo*,  
 23 75 Cal. App. 4th at 180.

24 Porter also argues she “was severely traumatized, and mentally dazed” because of the  
 25 incident and “due to this melee, she was not aware of what role each of these Defendant officers  
 26 played in her injuries, at the time she filed her original complaint.” Opp’n at 6 (citing Porter  
 27 Decl. ¶¶ 15–20). Again, her mental state is not material to whether she had readily available

1 information. Further, she has not provided expert testimony or other evidence to support an  
2 exception to *Woo*. *Cf. Gordon v. Mandell-Kogen*, No. B158120, 2003 WL 1735493, at \*4  
3 (Cal. Ct. App. Apr. 2, 2003), *as modified* (Apr. 16, 2003) (unpublished) (finding plaintiff's  
4 "argument that she was suffering from memory loss and was ignorant of the true name of the  
5 defendant at the time she filed the complaint is plausible in light of" a doctor's declaration  
6 attesting to her memory loss).

7 Here, the court finds defendants have established their statute-of-limitation defense as a  
8 matter of law. No reasonable juror could conclude Porter did not have readily available  
9 information that would have refreshed her recollection of the defendants' identities at the time of  
10 filing her initial complaint.

#### 11 **IV. CONCLUSION**

12 Porter's claims are barred by the statute of limitations. Thus, the court must grant  
13 summary judgment in defendants' favor. *See Brand Surgical Inst. v. Aetna Life Ins. Co.*,  
14 No. 21-8642, 2022 WL 2046205, at \*8 (C.D. Cal. Mar. 7, 2022) ("[T]he Court's hands are tied  
15 with respect to the statute of limitations question.").

16 Accordingly, **defendants' motion for summary judgment is granted. Plaintiff's**  
17 **motion to strike is denied.** The Clerk of the Court is directed to close this case.

18 This order resolves ECF Nos. 57, 58 and 71.

19 IT IS SO ORDERED.

20 DATED: January 9, 2023.

21   
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CHIEF UNITED STATES DISTRICT JUDGE